

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL JOACHIN BILSON,

Plaintiff,

v.

BILL ELFO, et al.,

Defendants.

Case No. C05-0049-JLR

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff is proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights action. Plaintiff's complaint alleges that officials at the Whatcom County Jail denied him access to the courts. Defendants have filed a motion for summary judgment in response to the complaint. The plaintiff has filed no opposition to the motion. Having reviewed the parties' pleadings, supporting materials, and the available record, the Court recommends that defendants' motion for summary judgment be granted and that plaintiff's action be dismissed with prejudice.

FACTS AND PROCEDURAL HISTORY

Plaintiff alleges that, shortly after he was booked into the Whatcom County Jail on September 20, 2004, jail officials denied his properly prescribed medication. This is the subject of a § 1983 complaint in the Western District of Washington, pending before the

01 Honorable Mary Alice Theiler.¹ When he was not provided with what he deemed appropriate
02 amounts of paper, stamps, and envelopes to proceed with his lawsuit, he filed this action as a
03 separate § 1983 lawsuit. This Report and Recommendation deals only with his access to
04 court lawsuit.

05 Plaintiff alleges that officials ignored several administrative requests for the materials.
06 Dkt. No. 9. In addition, plaintiff contends that Sergeant Fair stated to him that it is “not the
07 jail or jail staff’s responsibility to assist inmates in suing the jail[,]” but that he would send
08 plaintiff’s request to Lieutenant DePaul. Dkt. No. 9.

09 Plaintiff alleges that his right to access to the courts was violated by denying him
10 access to sufficient supplies of paper, envelopes, and postage to file his suit. Dkt. No. 9.
11 Defendants have filed a motion for summary judgment. Dkt. No. 15. They argue that the
12 suit should be dismissed as to Sheriff Elfo and Sergeant DePaul because plaintiff has failed to
13 allege that they personally participated in violating his civil rights. Dkt. No. 15. They further
14 argue that plaintiff has failed to demonstrate that plaintiff has actually suffered an injury.
15 Dkt. No. 15.

16 Plaintiff has not responded to the motion for summary judgment.

17 SUMMARY JUDGMENT STANDARD

18 Summary judgment is appropriate when, viewing the evidence in the light most
19 favorable to the nonmoving party, there exists “no genuine issue as to any material fact” such
20 that “the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A
21 material fact is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty*
22 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). Genuine issues of material fact exist when the
23 evidence would enable “a reasonable jury . . . [to] return a verdict for the nonmoving party.”
24 *Id.* (internal citations omitted). In response to a properly supported summary judgment
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26 ¹Western District of Washington, Cause No. C05-047.

01 motion, the nonmoving party may not rest upon mere allegations or denials in the pleadings,
02 but must set forth specific facts demonstrating a genuine issue of fact for trial and produce
03 evidence sufficient to establish the existence of the elements essential to his case. *See* Fed. R.
04 Civ. P. 56(e). A mere scintilla of evidence is insufficient to create a factual dispute. *See*
05 *Anderson*, 477 U.S. at 252.

06 DISCUSSION

07 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must assert that
08 he suffered a violation of rights protected by the Constitution or created by federal statute,
09 and that the violation was proximately caused by a person acting under color of state or
10 federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991); *see also WMX*
11 *Technologies, Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc). Prison officials
12 acting in their official capacity are persons acting under color of state law for purposes of §
13 1983. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

14 Section 1983 liability arises only upon a showing that defendants personally
15 participated in violating plaintiff's civil rights. *Respondeat superior* liability will not support
16 § 1983 liability unless plaintiff demonstrates that a supervisor participated in the violations,
17 directed the violations, or knew about the violations and did nothing to prevent them. *Taylor*
18 *v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (internal citation omitted); *see also Mabe v. San*
19 *Bernardino County*, 237 F.3d 1101, 1109 (9th Cir. 2001).

20 Here, plaintiff has not demonstrated that defendants Elfo and DePaul personally
21 participated in the alleged violation of his civil rights. With respect to Sheriff Elfo, the
22 complaint only mentions that he "runs the jail." Dkt. No. 9. As to Lieutenant DePaul, the
23 complaint only indicates that Sergeant Fair stated he would "check" with him regarding
24 plaintiff's request. Moreover, Sergeant Fair stated that he contacted the Public Defender's
25 Office on behalf of Mr. Bilson and told the plaintiff that the Public Defender's Office would
26 provide him with his needed materials. He also told him that he could receive further

01 materials by simply sending a “blue slip.” Fair Decl. Dkt. No. 9. As explained by Wendy
02 Jones, the Chief of Corrections of the Whatcom County Jail, “blue slips” are used as a formal
03 message system. If an inmate is requesting legal materials, the “blue slip” is routed to the
04 Whatcom County Public Defender’s Office. Jones Decl. Dkt. No. 9. In addition, if
05 assistance is needed, there is a procedure to request a Whatcom County Superior Court to
06 have the Public Defender appointed, or to arrange trips to the County law library. Jones Decl.
07 Dkt. No. 9. Defendant has failed to indicate that he attempted to make use of any of these
08 processes and procedures, or, if so, that they proved to be ineffective. There is therefore no
09 indication that either Sheriff Elfo or Lieutenant Fair personally participated in denying
10 plaintiff’s civil rights. Hence, plaintiff has failed to plead facts that can reasonably be
11 construed to show that these defendants violated his civil rights.

12 Even if plaintiff’s complaint did adequately allege a violation against Sergeant Fair,
13 summary judgment must be granted because plaintiff cannot demonstrate that he has suffered
14 an actual injury. In order for an inmate to state a violation of his right to access the courts, he
15 must show that deficiencies at the prison caused him an actual injury, such as a missed filing
16 deadline. *Lewis v. Casey*, 518 U.S. 343, 348-49, 351-52 (1996). Here, plaintiff can make no
17 such showing. Indeed, plaintiff was not only able to file his original suit in district court, but
18 was able to bring the present suit as well. *See* Case No. 05-47. Plaintiff cannot demonstrate
19 that he suffered the actual injury necessary to proceed with his suit against any of the named
20 defendants.


21 Finally, plaintiff has failed to oppose the defendants’ motion for summary judgment.
22 Defendants’ motion for summary judgment should therefore be granted as to all defendants.

23 CONCLUSION

24 Defendants’ motion for summary judgment should be granted because plaintiff’s
25 complaint fails to demonstrate how defendants Bilson and DePaul personally participated in
26 violating his civil rights. Further, even if plaintiff could prove that they violated his civil

01 rights, he cannot show that any defendant caused him actual injury. The Court therefore
02 recommends that defendants' motion for summary judgment be granted and plaintiff's suit be
03 dismissed with prejudice.

04 DATED this 5th day of August, 2005.

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07 JAMES P. DONOHUE
08 United States Magistrate Judge
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